

E-Filed on 02/05/08

DIAMOND MCCARTHY LLP

909 Fannin, Suite 1500
Houston, Texas 77010
Telephone (713) 333-5100
Facsimile (713) 333-5199

Allan B. Diamond, TX State Bar No. 05801800
Email: adiamond@diamondmccarthy.com
Eric D. Madden, TX State Bar No. 24013079
Email: emadden@diamondmccarthy.com

Special Litigation Counsel for USACM Liquidating Trust

LEWIS AND ROCA LLP

3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169-5996
Telephone (702) 949-8320
Facsimile (702) 949-8321

Susan M. Freeman, AZ State Bar No. 004199
Email: sfreeman@lrlaw.com
Rob Charles, NV State Bar No. 006593
Email: rcharles@lrlaw.com

Counsel for USACM Liquidating Trust

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:
USA COMMERCIAL MORTGAGE COMPANY,

Debtor.

In re:
USA CAPITAL REALTY ADVISORS, LLC,

Debtor.

In re:
USA CAPITAL DIVERSIFIED TRUST DEED FUND,
LLC,

Debtor.

In re:
USA CAPITAL FIRST TRUST DEED FUND, LLC,

Debtor.

In re:
USA SECURITIES, LLC,

Debtor.

Affects:
☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

Case Nos.:
BK-S-06-10725-LBR
BK-S-06-10726-LBR
BK-S-06-10727-LBR
BK-S-06-10728-LBR
BK-S-06-10729-LBR

JOINTLY ADMINISTERED
Chapter 11 Cases

Judge Linda B. Riegler

**USACM LIQUIDATING
TRUST'S EX PARTE MOTION
FOR ORDER SHORTENING
TIME TO HEAR USACM
LIQUIDATING TRUST'S
MOTION TO COMPEL
PRODUCTION OF
DOCUMENTS BY WELLS
FARGO**

Hearing Date: OST REQUESTED
for February 21, 2008

Hearing Time: OST REQUESTED
for 9:30 a.m.

The USACM Liquidating Trust (the "Trust") hereby files this Ex Parte Motion for Order Shortening Time to Hear USACM Liquidating Trust's Motion to Compel Production of Documents By Wells Fargo and in support thereof, respectfully states as following:

1 1. On February 5, 2008, the Trust has filed its Motion to Compel Production of
2 Documents by Wells Fargo (the "Motion") (Docket No. 5782). The Motion is based on Wells
3 Fargo's failure to produce all documents responsive to the Rule 2004 Subpoena for examination
4 and production of documents (the "Subpoena") that the Trust served on Wells Fargo's on March
5 13, 2007.

6
7 2. Over the course of many months following the service of the Subpoena, Wells
8 Fargo asked for numerous extensions and otherwise delayed the production while promising to
9 cooperate and produce the documents. After producing only a fraction of the documents
10 requested in the Subpoena, the Bank stopped the production at all.

11 3. The Trust now faces the deadline of April 14, 2008 – the date the statute of
12 limitations for avoidance actions under 11 U.S.C. § 546 expires – without many key documents
13 that Wells Fargo promised but has not produced.

14
15 4. As set forth more fully in the Motion, the documents requested in the Subpoena,
16 include emails and correspondence that Wells Fargo's employees maintained with USACM and
17 its related entities, as well as documents related to wires and ACH transfers. These documents,
18 crucial to the Trust's analysis of its potential avoidance claims, and might take several weeks to
19 collect.

20
21 5. On February 21, 2008, there is an omnibus hearing setting in front of this Court at
22 9:30 a.m.

23 6. In light of the facts described above, The Trust seeks an order from the Court
24 shortening time to hear the Motion on February 21, 2008 at 9:30 a.m.

25 2. Wells Fargo will not be prejudiced by the relief requested herein because by its
26 response to the Trust's Motion is due on February 20, 2008 – a day before the hearing. Thus,

1 holding the hearing on February 21, 2007 will not shorten in any way the time that Wells Fargo
2 has to respond to this Motion and brief the Court on relevant issues.

3 3. The Court can shorten notice pursuant to Federal Rule of Bankruptcy Procedure
4 9006(c)(1) and Bankruptcy Local Rule 9006(a).

5
6
7 Dated: February 5, 2008

8 **DIAMOND MCCARTHY LLP**

LEWIS AND ROCA LLP

9
10 By: /s/ Eric D. Madden
11 Allan B. Diamond, TX 05801800 (pro hac vice)
12 William T. Reid, IV, TX 00788817 (pro hac vice)
13 Eric D. Madden, TX 24013079 (pro hac vice)
14 909 Fannin, Suite 1500
15 Houston, Texas 77010
16 (713) 333-5100 (telephone)
17 (713) 333-5199 (facsimile)

18
19
20
21
22
23
24
25
26
*Special Litigation Counsel
for USACM Liquidating Trust*

By: /s/ Rob Charles
Susan M. Freeman, AZ 4199 (pro hac vice)
Rob Charles, NV 6593
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169-5996
(702) 949-8320 (telephone)
(702) 949-8321 (facsimile)

Counsel for USACM Liquidating Trust